IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

Crl.Rev.Pet.No. 1009 of 1999()

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CRA.262/1997 of ADDL. SESSIONS COURT, THRISSUR
SC.13/1996 of ASSISTANT SESSIONS COURT, IRINJALAKUDA

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REVN. PETITIONER:

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RAJAN, S/O. VARRIATTIL KUNJAPPU,
KARANCHIRA DESOM, KATTUR VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SRI.T.A.UNNIKRISHNAN
SRI.S.R.MANOJ

RESPONDENTS:

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STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. AMJAD ALI, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.P. NO. 4660/1999 IN CRL.R.P. NO. 1009/1999

DISMISSED

28.05.2007 SD/- K.R. UDAYABHANU, JUDGE.

/True Copy/

P.A to Judge.

**K.R. UDAYABHANU, J**

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**CRL. R.P. NO. 1009 OF 1999**

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**Dated this the 28th day of May 2007**

**O R D E R**

The revision petitioner stands convicted for the offence under Section 436 of the Indian Penal Code and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.50,000/- and in default to undergo simple imprisonment for two years.

2. The prosecution case is that on 15.12.1994 at about 3.30 p.m. the accused manhandled the defacto complainant and his sister and also set fire to the thatched house of the defacto complainant. The evidence adduced in the matter consisted of the testimony of PWs 1 to 11 Exts. P1 to P4 and MOs 1 to 11. The defence was produced Exts. D1 series and D2. The trial court acquitted the accused for the offences under Sections 323 and 324 IPC, but convicted him for the offence under Section 436 IPC.

3. The occurrence witnesses to the incident are PWs 1 to 4 of whom PW1 is the defacto complainant, PW2 is the sister, PW3 is the neighbour, PW4, is the niece of PW1 residing in the neighbouring house. It is in evidence that there was a dispute with the right of way and the accused while passing through the property of PW1 was

questioned by PW1 which resulted in the alleged manhandling and the injuries sustained to PW2, the widowed sister of PW1. It is on account of the fact that injuries were sustained by the accused as well and the details about the same were not furnished by the prosecution, the trial court acquitted the accused for the offences under Sections 323 and 324 IPC. But the evidence as to the offence under Section 436 was found to be reliable. There is no delay in registering the crime and recording the FIS which was recorded from at the hospital.

4. As already noted, PWs 1 to 4 testified with respect to the incident. It is the version that after the altercation and consequent beating up, PW2 sustained bleeding injuries and the accused left the spot. Immediately thereafter the accused again re-appeared and it is the version that PW1 and the others had left the house and was in the neighbouring house of PW3 apprehending that the accused may return and create further problems. It is then that the accused came again, entered the house, smashed the belonging inside the house and set fire to the house. The MOs produced contain the burnt clothes, partly burnt suit case, carbon smeared gold ornaments and partly burnt 100 rupee notes and other currency notes, partly burnt reapers, partly burnt ration card and note book as well as a bent steel plate.

5. It is the contention of the counsel for the revision petitioner that the evidence of PW1 is not in accordance with the FIS rendered. It is pointed out that the version in the FIS is that after the accused came out of the house the fire and smoke could be seen from the western side of the roof. But in his evidence, he has stated that he saw the accused setting fire to the cadjan leaves with which the house is thatched. But, I find that the contradiction has not been brought to the notice of PW7. No contradictions with his previous statement has also been marked. Moreover, no material contradictions has been brought out from the evidence of PWs 2 to 4 who allegedly witnessed the incident. Of course, PW2 was taken to the hospital and she has not witnessed the incident subsequent to the accused left from the place in the first instance. PW3, the neighbour has stated that he tried to put out the fire, but the accused attempted to beat him in order to prevent putting out the fire. PW4 , the niece of PW1 has also testified that she has seen the incident and the accused set fire to the house . No contradictions with the previous statement has been brought out. The scene mahazar i.e., Ext.P4 also contains the details of the house that was allegedly set fire and the same was proved by PW7, the independent witnesses as well as the official witness who recorded the

same. In the circumstances and in view of the evidence adduced by the prosecution, I find no ground to interfere in the findings of the courts below with respect to the offence under Section 436 IPCI. The conviction for the offence under Section 436 is confirmed.

6. So far as the sentence is concerned, the counsel for the revision petitioner pleaded for leniency pointing out that the accused is aged 65 years right now. The incident has taken place in the year 1994, that is, more than 10 years have been elapsed since the occurrence. Considering the long delay and the age of the accused, I find that the sentence is liable to be modified. In the circumstances, sentence for the offence under Section 436 is modified to imprisonment till the rising of the court and to pay a fine of Rs.1,00,000/- (Rupees one lakh only) and in default to undergo simple imprisonment for six months. The revision petitioner is granted two months time from today onwards to remit the fine amount. The revision petitioner shall appear before Principal Assistant Sessions Judge, Irinjalakuda on **30.07.2007** to receive sentence.

The Crl.R.P is disposed of accordingly.

**K.R. UDAYABHANU, JUDGE.**

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